



# Texas Department of Health

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Commissioner

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September 25, 1991

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RQ-224

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SEP 26 91

Opinion Committee

Honorable Dan Morales  
Attorney General of Texas  
P. O. Box 12548  
Austin, Texas 78711-2548

Re: Request for Legal Opinion

Dear General Morales:

On October 17, 1990, an opinion was requested by this agency from your predecessor, Attorney General Jim Mattox, concerning the use of x-ray mammography machines. That request was assigned a number (RQ-2146); however, the Opinion Committee declined to answer on the basis that the 72nd Legislature should be given an opportunity to clarify the issue. The letter (copy enclosed) also invited a resubmission of the question in the event the Legislature did not resolve the issue. It did not do so, and the matter is now officially resubmitted to you.

This is a request for an Attorney General's Opinion under the authority of the Texas Government Code, Section 402.042(b)(2), V.T.C.A. The Department's question is as follows: Does a chiropractor have the authority under Section 1 of Article 4512b, V.T.C.S., to perform mammography? The information being requested is not involved in litigation.

The facts are as follows. The Department has received a request from a chiropractor for a certificate of registration to perform mobile screening mammography. In connection with his application, he sought an opinion from the Texas Board of Chiropractic Examiners. On March 12, 1990, the Bureau of Radiation Control of the Texas Department of Health received an opinion from the Texas Board of Chiropractic Examiners that x-ray mammography falls within the scope of practice for chiropractic as defined by the Texas Legislature. A copy of this letter is attached as Exhibit A.

Chapter 401 of the Texas Health and Safety Code grants broad authority for regulation of sources of radiation to the Texas Department of Health. Section 32.1(a) of the "Texas Regulations for Control of Radiation" states the following:

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All usage of such machines [radiation machines] under this part shall be made by or under the supervision of an individual licensed in accordance with Texas law to practice the healing art or veterinary medicine in which a radiation machine is used.

Section 32.1(b) states that the requirements in Part 32 are to protect both the public and workers in the field.

Section 1 of Article 4512b, V.T.C.S., defines the acts constituting the practice of chiropractic as follows:

Sec. 1 A person shall be regarded as practicing chiropractic within the meaning of this Act if the person:

(1) uses objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body;

(2) uses adjustment, manipulation, or other procedures in order to improve subluxation or the biomechanics of the musculoskeletal system; or

(3) holds himself out to the public as a chiropractor or uses the term "chiropractor," "chiropractic," "doctor of chiropractic," "D.C.," or any derivative of those terms in connection with his name.

"Musculoskeletal" is defined in Dorland's Illustrated Medical Dictionary, 26th Edition, W. B. Saunders Company 1981, at page 847, as "pertaining to or comprising the skeleton and the muscles, as musculoskeletal system." A breast is broadly defined as a glandular organ or mammary gland. "Mammography" is defined in Dorland's Illustrated Medical Dictionary, at page 773, as "roentgenography [x-ray] of the mammary gland." A copy of these definitions are attached as Exhibit B. Mammography is used for early detection of cancer. Evaluating a breast for cancer does not come under the definition of analyzing, examining, or evaluating the biomechanical condition of the spine or musculoskeletal system.

The second phrase under the definition of practicing chiropractic involves the work "subluxation". The rules of the Texas Board of Chiropractic Examiners define subluxation. A copy of this rule is attached as Exhibit C. A more easily understood definition is found in Dorland's Illustrated Medical Dictionary, at page 1264, and states simply "an incomplete or partial dislocation." 22 TAC Section 75.3 states the following: "Diagnostic techniques are authorized where necessary to make proper diagnosis preparatory to

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spinal treatment....." A copy of this rule is attached as Exhibit D. Even if the diagnostic x-ray technique of mammography were authorized preparatory to spinal treatment as required under 22 TAC Section 75.3, the purpose does not appear to be in order to use adjustment, manipulation, or other procedures to improve subluxation or the biomechanics of the musculoskeletal system.

On April 7, 1990, the Texas Radiation Advisory Board unanimously voted to deny the chiropractors application to perform mobile mammography film screening as set out in the attached Minutes. (Exhibit E) Their position and the position of the Texas Department of Health is that registration of an x-ray machine for chiropractic use would be limited to the study of the spine and the musculoskeletal system by an individual licensed to perform such services (Exhibit F). Mammography is not included in the permitted use because it seems to constitute the practice of medicine as set out in Section 1.03(12) of Article 4495b, V.T.C.S.

In addition to the Exhibits described above, additional miscellaneous documents are included which you might find helpful.

Your consideration of this request will be appreciated. Please call Sarah P. Denton in the Office of General Counsel if you have any questions.

Sincerely,



Robert A. MacLean, M.D.  
Acting Commissioner of Health

Enclosures